

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEVELOPERS SURETY AND
INDEMNITY COMPANY, an Iowa
Corporation,

Plaintiff(s),

v.

A-1 SEPTIC CONSTRUCTION,
INC., a California
Corporation; ROBERT PIDDOCK,
an individual; CAROLE
PIDDOCK, an individual,

Defendant(s).

No. C10-0616 BZ

REPORT AND RECOMMENDATION

Before me is plaintiff's motion for entry of default judgment against defendants A-1 Septic Construction, Inc. ("A-1 Septic"), Robert Piddock and Carole Piddock (collectively "Defendants"). Defendants have never appeared in this action and did not respond to plaintiff's motion. As defendants have not consented to my jurisdiction, I will have the matter reassigned. The following is my report and recommendation for entry of default judgment.

On February 11, 2010, plaintiff filed a complaint for

1 breach of an indemnity agreement arising out of the
2 defendants' default "on certain performance and payment
3 obligations of insurance bonds and that said obligations fall
4 within Developers Surety's obligations under the Bonds."
5 Compl. ¶ 14. In its complaint, plaintiff seeks damages for
6 breach of the agreement. It also seeks two forms of
7 injunctive relief but does not pursue those remedies in this
8 motion.

9 Plaintiff effected service of process on all defendants
10 on February 28, 2010. Motion, Ex. 2-4. Defendants failed to
11 answer the complaint or otherwise defend the action. On April
12 1, 2010, upon plaintiff's request, the Clerk of this court
13 entered defendants A-1 Septic's and Robert Piddock's default
14 under Rule 55(a). Doc. No. 15. On April 8, 2010, upon
15 plaintiff's request, the Clerk of this court entered defendant
16 Carole Piddock's default under Rule 55(a). Doc. No. 18. By
17 their default, defendants are deemed to have admitted the
18 well-pleaded averments of the complaint except those as to the
19 amount of damages. See Fed. R. Civ. P. 8(d).

20 A court may not enter a default judgment against an
21 unrepresented minor, an incompetent person, or a person in
22 military service. See Fed. R. Civ. P. 55(b)(2); 50 App.
23 U.S.C. § 521. As a corporation, A-1 Septic is not entitled to
24 such protection. Compl. ¶ 3. Plaintiff has submitted
25 sufficient evidence that Robert and Carole Piddock are neither
26 minors, incompetent, nor in the military. Nava Suppl. Decl. ¶
27 3-4.

28 Pursuant to Rule 55(b)(2), the court may enter a default

1 judgment against a party against whom default has been
2 entered. The decision to grant or deny a default judgment
3 under Rule 55(b) is within the discretion of the Court. Eitel
4 v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). A formal
5 hearing is not required for a court to render a default
6 judgment. Davis v. Fendler, 650 F.2d 1154 (9th Cir. 1981).

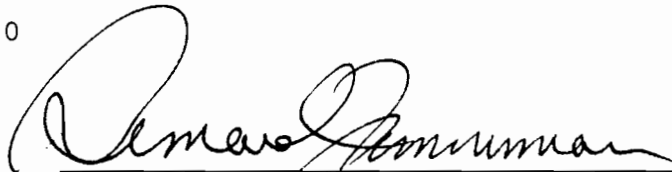
7 According to the well-pleaded facts in the complaint,
8 plaintiff issued surety bonds on behalf of A-1 for various
9 public works projects. As partial consideration for the
10 issuance of these bonds, A-1 and the Piddocks personally
11 agreed to indemnify plaintiff for payments of costs, expenses,
12 and claims made against the bonds. Compl. ¶ 9, ex. A. The
13 Indemnity Agreement at issue provided that "in execution of
14 [an indemnity] bond," defendants agree to "reimburse
15 [plaintiff] for all payments made for and to indemnify and
16 keep indemnified [plaintiff] from" any demand or loss to which
17 plaintiff could become liable. Id. ¶ 10. It also provides
18 that "each of the undersigned agrees to pay the full amount"
19 of the indemnity owed. Id. The Agreement is signed by Robert
20 and Carole Piddock individually and on behalf of A-1 Septic,
21 making each defendant personally liable for any breach.
22 Motion, Ex. 10. A-1 then defaulted on certain obligations,
23 causing claims to be made against the bonds. Plaintiff
24 satisfied these claims but has not been reimbursed by
25 defendants. As these facts are deemed admitted by defendants'
26 default, I find defendants liable for breach of the indemnity
27 agreement.

28 To prove damages, plaintiff submitted a declaration by

1 Victor Nava, a Senior Claims Examiner II with plaintiff. Doc.
2 No. 21. The Nava Declaration establishes that plaintiff
3 issued two bonds, one for \$188,888 (the "San Mateo Bond") and
4 one for \$179,977 (the "Antioch Bond") on behalf of A-1 Septic.
5 The net losses from the San Mateo Bond total \$4,978.91. The
6 net losses from the Antioch bond total \$141,596.82. The Nava
7 Declaration contains a thorough spreadsheet that reflects the
8 payments and receipts made by plaintiff on the bonds along
9 with copies of endorsed checks. Nava Decl., ex. 9.
10 Plaintiff's documents adequately account for the entire amount
11 sought.

12 For the foregoing reasons, I recommend that judgment be
13 entered in plaintiff's favor against A-1 Septic, Robert
14 Piddock and Carole Piddick for \$146,575.73. Plaintiff shall
15 notice his motion for attorney's fees before the district
16 judge to which this case is reassigned.

17 Dated: June 17, 2010

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20 Bernard Zimmerman
21 United States Magistrate Judge

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